IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12630 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BAROT ASHOKBHAI RAMANBHAI

Versus

STATE OF GUJARAT

Appearance:

MS MAMTA R VYAS for Petitioners

MR HN SOMPURA, AGP for Respondent No.1 & 2

MR IM PANDYA for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 26/04/2001

ORAL JUDGEMENT

Rule. Mr.H.N.Sompura, learned AGP waives service of rule on behalf of respondent nos.1 and 2 and Mr.I.M.Pandya waives service of rule for respondent No.3.

In the facts and circumstances of the case and with the consent of the parties the matter is taken up for final disposal today.

2. The petitioners are employees of respondent No.3 institution - Navdeep Education Trust Viklang Sahkar Vidyalaya Chhatralaya running the school and hostel for physically handicapped students at village Falu in Vijapur Taluka of Mahesana District. On account of certain alleged irregularities, recognition of respondent No.3 institution was cancelled by the Director, Social Welfare on 12.7.2000. Aggrieved by the said order, respondent No.3 institution filed a civil suit being Regular Civil Suit No.195 of 2000 challenging the said order which was received by the institution on 14.7.2000 and on the basis of which the institution had passed the order dated 15.7.2000 for terminating the petitioners' services.

3. On the interim application in the said suit, the Court of the Civil Judge (Senior Division), Mahesana passed the order dated 17.7.2000 directing the defendant authorities to maintain status quo. The order states that the orders have been passed looking to the future of 37 physically handicapped persons and 10 employees. After bi-parte hearing the learned Civil Judge (Senior Division) passed the order dated 18.11.2000 confirming the ad-interim injunction granted earlier till final decision of the suit.

4. It appears from the affidavit filed by the Deputy Director of Social Welfare that the Government has filed an Appeal from Order before the District Court, Mahesana challenging the aforesaid order dated 18.11.2000, however, no interim stay is granted by the District Court against the order of the learned Civil Judge (Senior Division). In this view of the matter, interim stay granted by the learned Civil Judge (Senior Division) is still in force.

5. Mr.H.N.Sompura, learned AGP appearing for the respondents - State of Gujarat and the Director of Social Welfare states that the said authorities are ready and willing to comply with the ad-interim interim order dated 12.7.2000 / 18.11.2000 and will release the grant in favour of the respondent - institution with the understanding that respondent No.3 - institution shall continue to employ the teaching / nonteaching staff except the three employees whose appointments were illegal and objected to by the authority earlier and therefore, the Director of Social Welfare had raised the

objection against their appointments.

6. Mr.Pandya for respondent No.3 - institution states that those three employees were already relieved earlier and are not going to be employed by respondent No.3 again.

Mr.Pandya further states that during the continuance of the interim stay granted by the learned Civil Judge (Senior Division) on 17.7.2000 and confirmed on 18.11.2000, respondent No.3 will continue to employ the petitioners and pay their salary, but respondent No.3 shall do so only during the continuance of the same and if the same is vacated / modified, respondent No.3 will not be able to bear the burden of the salary of the staff, and therefore, respondent No.3 will have to pass appropriate orders depending upon the outcome of the appeal pending before the District Court, Mahesana.

7. In view of the above consensus, it is directed that respondent No.3 shall send the pay bills of the petitioners' salary to the appropriate authority i.e. District Social Welfare Officer and the Director of Social Welfare shall issue the appropriate directions to release the grant in favour of respondent No.3 institution in accordance with law. The institution-respondent No.3 shall allow the petitioners to resume the duty and pay them arrears of salary as per the aforesaid directions.

The petitioners shall be at liberty to move the Court of the learned Civil Judge (Senior Division), Mahesana for permitting them to be joined as party defendants in Regular Civil Suit No.195 of 2000 which shall be duly considered by the said Court.

It is clarified that, this Court does not express any opinion on the legality or otherwise of the order which is passed by the Director of Social Welfare and the concerned Court hearing the said suit or appeal from order shall hear and decide the same on merits and in accordance with law without being influenced by this order.

8. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(M.S.Shah,J)

(pathan)